

OPEN MEETING ITEM



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COMMISSIONERS  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

Arizona Corporation Commission

DOCKETED

MAR 24 2008

DATE: MARCH 24, 2008

DOCKET NO: WS-01678A-07-0459

TO ALL PARTIES:

DOCKETED BY	ne
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Enclosed please find the recommendation of Administrative Law Judge Belinda Martin. The recommendation has been filed in the form of an Opinion and Order on:

BACA FLOAT WATER COMPANY, INC.  
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

APRIL 2, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

APRIL 8, 2008 and APRIL 9, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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AZ CORP COMMISSION  
DOCKET CONTROL

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF  
BACA FLOAT WATER COMPANY, INC FOR AN  
EXTENSION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN SANTA  
CRUZ COUNTY.

DOCKET NO. WS-01678A-07-0459

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

9 DATE OF HEARING: February 20, 2008

10 PLACE OF HEARING: Tucson, Arizona

11 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin

12 APPEARANCES: Marcie A. Shuman, SNELL & WILMER L.L.P., on  
13 behalf of Baca Float Water Company; and

14 Kevin O. Torrey, Staff Attorney, Legal Division, on  
15 behalf of the Utilities Division of the Arizona  
Corporation Commission.

16 **BY THE COMMISSION:**

17 On August 2, 2007, Baca Float Water Company ("BFWC" or "Company") filed with the  
18 Arizona Corporation Commission ("Commission") an Application for an Extension of its Certificate  
19 of Convenience and Necessity ("CC&N" or "Certificate") to provide sewer service in Santa Cruz  
20 County, Arizona.

21 On August 31, 2007, the Commission's Utilities Division Staff ("Staff") notified the  
22 Company that its application was not sufficient pursuant to the Arizona Administrative Code.

23 On October 30, 2007, BFWC responded to Staff's Insufficiency Letter.

24 On November 30, 2007, Staff notified the Company that its Application is sufficient pursuant  
25 to the Arizona Administrative Code.

26 On January 22, 2008, the Company filed a Notice of Filing Affidavit of Publication and  
27 Affidavit of Mailing.

28 On January 28, 2008, Staff filed its Staff Report in this matter recommending approval of the

1 application with conditions.

2 On February 13, 2008, the Company filed its Response to Staff Report noting that it had no  
3 comments or objections.

4 On February 20, 2008, a full public hearing was convened before a duly authorized  
5 Administrative Law Judge of the Commission at its offices in Tucson, Arizona. BFWC and Staff  
6 appeared through counsel and presented evidence and testimony. No members of the public appeared  
7 to give public comment. All matters were taken under advisement at the conclusion of the hearing.

8 \* \* \* \* \*

9 Having considered the entire record herein and being fully advised in the premises, the  
10 Commission finds, concludes, and orders that:

# 11 **FINDINGS OF FACT**

12 1. Pursuant to authority granted by the Commission, BFWC is an Arizona corporation  
13 engaged in the business of providing water and wastewater services in portions of Santa Cruz  
14 County.

15 2. BWFC was incorporated on December 1, 1959 and it is owned by Baca Float Land  
16 Development Limited Partnership. BFWC's officers are Mr. Gary Brasher (President) and Mr.  
17 Richard Lockwood (Secretary). Mr. Brasher is also a General Partner of Baca Float Land  
18 Development Limited Partnership.

19 3. BFWC originally received Commission authority to provide wastewater utility  
20 services in Decision Nos. 32233 (May 31, 1960) and 60721 (March 23, 1998).

21 4. BFWC currently provides wastewater utility service to approximately 350 customers  
22 and water service to approximately 271 customers in portions of Santa Cruz County, Arizona.

23 5. In early 2007, Tubac 40, L.L.C., an Arizona limited liability company ("Tubac 40"),  
24 contacted BWFC and requested BWFC to provide sewer service to approximately 40 acres of land,  
25 comprised of 82 lots. Mr. Brasher is a member of Tubac 40, but Baca Float Development Limited  
26 Partnership has no interest in Tubac 40.

27 6. On August 2, 2007, BFWC filed an application seeking Commission authority to add  
28 the approximately 40 non-contiguous acres to its current certificated area. The existing system is

1 approximately 1.5 miles south of the requested extension area. As such, the Company intends to  
2 construct a new facility for the development. The legal description for the proposed extension area  
3 for BFWC is set forth in Exhibit A attached hereto and incorporated herein by reference.

4 **Wastewater System**

5 7. With respect to BFWC's current wastewater system, BFWC owns and operates a  
6 100,000 gallon per day ("GPD") sub-surface constructed wetland treatment plant and a collection  
7 system serving approximately 350 connections.

8 8. In the proposed extension area, BWFC anticipates serving 10 customers in the first  
9 year and 82 customers by the fifth year. The Company's representative testified that the beginning of  
10 construction has been pushed back from summer of 2008 to summer of 2009. Arizona-American  
11 Water Company, currently certificated to provide water service to the proposed extension area, will  
12 provide water service to the development.

13 9. The sewer system will consist of a 19,000 GPD sub-surface constructed wetland  
14 treatment system with sub-surface trench disposal that will serve the 82 lots. This type system is  
15 similar to the one currently operated in the Company's certificated area. Staff concluded that the  
16 proposed system will have adequate sewer treatment capacity to serve the proposed extension area.

17 10. The new system will be financed through advances in aid of construction and the use  
18 of main extension agreements with the developers.

19 11. The estimated cost to construct the wetland and disposal system is \$722,525 and the  
20 cost of the collection system is \$320,500. Staff reviewed the proposed sewer plant facilities and the  
21 related costs and concluded that the facilities and the costs are reasonable. However, Staff noted that  
22 no "used and useful" determination was made and that no conclusions should be inferred for rate  
23 making or rate base purposes.

24 12. The Company will apply for a Type 4 General Permit. This will be filed with the  
25 Arizona Department of Environmental Quality ("ADEQ") in lieu of applying for an amendment to  
26 the Areawide Water Quality Management Plan, or a 208 Plan. A 208 Consistency Review Form will  
27 be included as part of the Type 4 General Permit Application.

28 13. The General Permit Application has not been submitted by the Company.

14. The Company's current system is in compliance with ADEQ requirements.

15. According to Staff's Report, the Utilities Division Compliance Section found no outstanding compliance issues for BFWC. The Company is current in its property taxes.

16. BFWC will provide wastewater utility service in the extension area at its existing rates and charges. However, pursuant to Decision No. 69949 (October 30, 2007), the Company must file a rate case by May 31, 2009, using a 2008 test year.

17. Although the Company asserts that the requested extension area is within the boundaries of BWFC's existing Franchise Agreement with Santa Cruz County, there is no evidence of the Franchise Agreement.

18. Staff recommends approval of BFWC's application for an extension of its CC&N to provide wastewater service, subject to compliance with the following conditions:

- a. That BFWC charge its authorized rates and charges in the extension area.
- b. That BFWC file with Docket Control, as a compliance item in this docket, within 365 days of the Decision in this matter, a copy of the Franchise Agreement with Santa Cruz County which includes the extension area.
- c. That BFWC file with Docket Control, as a compliance item in this docket, within two years of a Decision in this matter, copies of the General Permits for (a) the wetland treatment facility, and (b) the collection system for the development in the requested area.
- d. That if BFWC fails to comply with the above items within the specified timeframes, the CC&N extension, after due process, shall be considered null and void.

19. Staff recommendations as set forth in Findings of Fact No. 18 are reasonable and shall be adopted.

#### CONCLUSIONS OF LAW

1. Baca Float Water Company is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

2. The Commission has jurisdiction over Baca Float Water Company and the subject matter of the application.

3. Notice of the application was provided in accordance with the law.

4. There is a public need and necessity for wastewater service in the proposed service territory as set forth in Exhibit A attached hereto and incorporated herein by reference.

5. Subject to compliance with the above-stated conditions, Baca Float Water Company is a fit and proper entity to receive an extension of its wastewater Certificate, for the proposed extension area in Santa Cruz County set forth in Exhibit A.

6. Staff's recommendations in Finding of Fact No. 18, are reasonable and shall be adopted.

## ORDER

IT IS THEREFORE ORDERED that the application of Baca Float Water Company to extend its Certificate of Convenience and Necessity to provide wastewater utility service in Santa Cruz County as described in Exhibit A attached hereto and incorporated herein by reference, is approved subject to the conditions and requirements by Staff and found in the following ordering paragraphs.

IT IS FURTHER ORDERED that Baca Float Water Company shall charge its existing rates and charges in the extension area, until further Order of the Commission.

IT IS FURTHER ORDERED that Baca Float Water Company shall file with Docket Control, as a compliance item in this docket, within 365 days of the Decision in this matter, a copy of the Franchise Agreement with Santa Cruz County that includes the extension area.

IT IS FURTHER ORDERED that Baca Float Water Company shall file with Docket Control, as a compliance item in this docket, within two years of the effective date of the Decision in this matter, copies of the General Permits for the wetland treatment facility and the collection system for the development in the requested area.

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1 IT IS FURTHER ORDERED that failure by Baca Float Water Company to comply with the  
2 Staff's recommendations, within the specified time frames set forth above, will render the Certificate  
3 extension null and void, after due process.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
6  
7

8 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_  
9

10 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_  
11

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Director of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this \_\_\_\_ day of \_\_\_\_\_, 2008.

17 \_\_\_\_\_  
18 BRIAN C. McNEIL  
19 EXECUTIVE DIRECTOR

20 DISSENT \_\_\_\_\_  
21

22 DISSENT \_\_\_\_\_  
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24  
25  
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28

1 SERVICE LIST FOR:

BACA FLOAT WATER COMPANY

2 DOCKET NO.:

WS-01678A-07-0459

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4 Marcie A. Shuman  
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9 Phoenix, AZ 85007

10 Ernest G. Johnson, Director  
Utilities Division  
11 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
12 Phoenix, AZ 85007



## EXHIBIT A

All that part of the Southwest quarter of Section 6, Township 21 South, Range 13 East, Gila and Salt River Base and Meridian, Santa Cruz County, Arizona, described as follows:

Beginning at the West quarter corner of said Section 6,

Thence South 90 degrees 36 minutes 03 seconds East, along the West line of said Section, 1389.43 feet;

Thence North 88 degrees 48 minutes 08 seconds East parallel with the North line of said Southwest quarter, 1669.09 feet to a point in the West right-of-way line of the Tucson Nogales Highway;

Thence North 08 degrees 55 minutes 18 seconds West, along right-of-way North line, 1402.08 feet to a point in the North line of said Southwest quarter;

Thence South 88 degrees 48 minutes 08 seconds West, along said North line, 1466.18 feet to the POINT OF BEGINNING.

EXCEPT all coal and other minerals as reserved in the Patent from the United States of America.

AND EXCEPT the following described property:

Those portions of Lot 6 and of the East Half of the Southwest quarter (E1/2 SW1/4) of Section 6, Township 21 South, Range 13 East, Gila and Salt River Base and Meridian, Santa Cruz County, Arizona, as described in that Deed dated November 14, 1972, and recorded December 1, 1972, in Docket 151 at Page 172, records of said County, which lies Easterly of the following described line:

Commencing at the Southwest corner of said Section 6;

Thence North 89 degrees 11 minutes 50 seconds East, along the South line thereof, a distance of 1842.15 feet;

Thence North 08 degrees 27 minutes 50 seconds West, 1100.88 feet;

Thence South 81 degrees 32 minutes 10 seconds West, 185.00 feet to THE POINT OF BEGINNING;

Thence North 08 degrees 27 minutes 50 seconds West, 565.00 feet;

Thence South 81 degrees 32 minutes 10 seconds West, 150.00 feet;

Thence North 08 degrees 27 minutes 50 seconds West, 175.00 feet;

Thence South 81 degrees 32 minutes 10 seconds West, 150.00 feet;

Thence North 08 degrees 27 minutes 50 seconds West, 350.00 feet;

Thence North 81 degrees 32 minutes 10 seconds East, 300.00 feet;

Thence North 08 degrees 27 minutes 50 seconds West, 1000.00 feet to THE POINT OF ENDING.